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## § 2000. Rules of Construction and Definitions.

(a) Rules of Construction. The following rules of construction apply to the regulations contained in this division, except as otherwise noted:

(1) The enumeration of some criteria for the making of discretionary decisions does not prohibit the application of other criteria reasonably related to the decision being made.

(2) The order in which criteria are listed does not indicate their relative weight or importance.

(3) "Inmate," "prisoner," or "parolee" applies to any person who is or has been committed to the custody of the Director of Corrections, including inmates, residents, parolees, and discharges, regardless of that person's present status.

(4) "Regulation" means rule or regulation.

(5) "Shall" is mandatory, "should" is advisory, and "may" is permissive.

(6) The past, present, or future tense includes the others.

(7) The masculine gender includes the feminine gender; the singular includes the plural.

(8) The symbol s refers only to board rules contained in this division.

(9) The time limits specified in these rules do not create a right to have the specified action taken within the time limits. The time limits are directory, and the failure to meet them does not preclude taking the specified action beyond the time limits.

(b) Definitions. For the purpose of the regulations contained in this division the following words definitions below shall have the following meanings:

(1) ISL Prisoner. A person sentenced to prison for a crime committed on or before June 30, 1977, who would have been sentenced under Penal Code section 1170 if he had committed the crime on or after July 1, 1977.

(2) DSL Prisoner. A person sentenced to prison under Penal Code section 1170 for a crime committed on or after July 1, 1977. For the purpose of these rules, once an ISL prisoner has received a retroactively calculated DSL release date all rules applying to DSL prisoners apply to the ISL prisoner's DSL release date and parole.

(3) Life Prisoner. A prisoner serving a sentence of life with the possibility of parole. The parole date is determined by the board. Life sentences may be imposed for the following crimes or conspiracy to commit any of the following crimes:

(A) First degree murder (Penal Code section 187).

(B) Second degree murder (Penal Code section 187) committed on or after November 8, 1978.

(C) Kidnapping for extortion or ransom, with bodily harm to the victim (before September 22, 1951) and without bodily harm to the victim (since September 22, 1951); and kidnapping for robbery (Penal Code section 209).

(D) Train wrecking not resulting in death or bodily harm (Penal Code section 219).

(E) Sabotage resulting in death or great bodily harm (former Military and Veterans Code section 1672a).

(F) Certain forms of aggravated assault by a prisoner serving a sentence of life imprisonment (Penal Code section 4500).

(G) Exploding a destructive device causing mayhem or great bodily injury (Penal Code section 12310).

(H) Attempt to murder a government official in retaliation for or prevention of his performance of official duties. (Penal Code Section 217.1).

(I) Habitual Sex Offender, Penal Code Section 667.51(c): A party who has violated Penal Code Section 288 (committing lewd or lascivious acts or crimes against children) and who has

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served two or more prison terms as defined in Section 667.5 as punishment for violation of an offense listed in subdivision (b), including commission to the state hospital.

(J) Habitual Offender, Penal Code Section 667.7: Any party convicted of a felony involving or likely to involve infliction of great bodily harm, and who has served two or more prior prison terms as per Section 667.5 for crimes of murder, mayhem, rape, etc. or any felony punishable by death or life imprisonment, with or without possibility of parole.

(K) Attempted willful, deliberate, and premeditated murder as defined in Penal Code Section 189 (Penal Code Sections 187, 664).

(L) Aggravated mayhem (Penal Code Section 205).

(M) A new conviction or violation of any of specified controlled substance provisions where the person has served two separate prior prison terms upon conviction of any of the specified provisions (Penal Code Section 667.75).

(4) Adjusted Maximum DSL Date. This date is computed by adding any at large time to the unadjusted maximum DSL date.

~~(5) Adverse Witness. A person who has given information against a prisoner or parolee.~~

(6) (5) Agent. See Parole Agent.

(7) (6) Asylum State. The state other than California in which a parolee-at-large (PAL) is in custody.

(8) (7) Battered Woman Syndrome. Evidence of the effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.

(9) (8) Board. See Board of Prison Terms.

(10) (9) Board Action. An official decision of the board in an individual case.

(11) (10) Board of Prison Terms (BPT). The administrative board responsible for setting parole dates, establishing parole length and conditions, discharging sentences for certain prisoners and parolees; granting, rescinding, suspending, postponing, or revoking paroles; conducting disparate sentence reviews; advising on clemency matters; and handling miscellaneous other statutory duties. Persons under the board's jurisdiction are all adult felons committed by superior courts to the Director of Corrections under Penal Code sections 1168 and 1170 and all adult felons sentenced under the Indeterminate Sentence Law.

(12) (11) Briggs Initiative: Proposition 7, November 7, 1978 general election, specifying new minimum eligible parole release dates for first and second degree murders, effective November 8, 1978.

(13) (12) C&PR. Classification and Parole Representative: the department employee at each prison who has been designated to be that prison's liaison with the board. Such designation shall be made by the Director of Corrections after consultation with the board.

(14) (13) California Agency Parolee. A felon released from confinement in a California prison to supervision in a California community who subsequently is within the custody of any agency of the State of California or any subdivision thereof except the Department of Corrections.

(15) (14) California Agency Prisoner. A prisoner who has been transferred from the custody of the Director of Corrections to the custody of any agency of the State of California or any subdivision thereof.

(16) (15) California Concurrent Parolee. A prisoner on parole from a California sentence and a sentence of another jurisdiction who is being supervised in a California community pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175-11179).

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(17) (16) Case Conference. A documented conference between a parole agent and his supervisor to discuss a parolee's behavior.

(18) (17) Central File. A master file maintained by the department containing records regarding each person committed to its jurisdiction. This file is maintained by the institution or parole region to which the person is assigned. See department regulations for the specific contents of this file.

(19) (18) Central Office. The board office in Sacramento.

(20) (19) Central Office Calendar. The central office calendar is composed of commissioners or deputy commissioners as designated by the chairman. They are authorized to make decisions regarding matters reported to the board, including the decision to order a hearing scheduled.

(21) (20) Central Office File. A folder maintained by the department's Chief Records Administrator in Sacramento regarding each felon.

The file contains copies of some records and correspondence accumulated during commitment.

(22) (21) Central Office Hearing Coordinator. The board employee at the central office who is responsible for schedules, attorney appointments, and other services related to hearings.

(23) (22) Chairman. The administrative head of the board who is designated by the Governor pursuant to Penal Code section 5075.

(24) (23) Commissioner. An commissioner official of the board appointed by the Governor pursuant to Penal Code Section 5075.

(25) (24) Community Release Board (CRB). The name of the Board of Prison Terms ~~was the Community Release Board until prior to~~ the name was changed effective January 1, 1980. Any references to Community Release Board apply to the Board of Prison Terms.

(26) (25) Concurrent Parolee. A prisoner on parole from a California sentence and a sentence of another jurisdiction who is being supervised in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175-11179).

(27) (26) Concurrent Prisoner. A California prisoner, also under sentence of another state, who is concurrently serving both sentences in a penal institution of the other state.

(28) (27) Conditions of Parole. The specific conditions under which a prisoner is released to parole supervision.

(29) (28) Consecutive Prisoner. A California prisoner, also under sentence of another state, who is confined in a penal institution of the other state and whose California term shall commence upon completion of the other state's sentence.

(30) (29) Consecutive Term. Pursuant to amendments to Penal Code Section 669, effective January 1, 1979, a life term may be imposed consecutive to a determinate term.

(31) (30) Cooperative Parolee. A felon released from confinement in a California prison to supervision in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175-11179).

(32) (31) Coordinator Staff. Department staff (institution and P&CSD) who coordinate parole postponement, rescission, and revocation hearings.

(33) (32) CRC. California Rehabilitation Center: a control and treatment institution for civilly committed narcotic addicts.

(34) (33) Criminal conduct. Conduct constituting a felony or misdemeanor under federal, state, or county law.

(35) (34) Cum. Sum. Cumulative Case Summary: the permanent and cumulative summary of specific portions of the record maintained by the department regarding each prisoner from reception to discharge.

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~~(36)~~ (35) Department. The Department of Corrections.

~~(37)~~ (36) Deputy Commissioner. An ~~deputy commissioner~~ official of the board employed pursuant to Penal Code Section 5076.1.

~~(38)~~ (37) DSL. Uniform Determinate Sentencing Act of 1976. Stats. 1976, Chapter 1139 as amended by Stats. 1977, Chapter 165. This refers to sections of the Penal Code and other Codes as they became operative July 1, 1977.

~~(39)~~ (38) DOP. A difference of opinion regarding a prisoner's or parolee's case requiring resolution at higher level.

~~(40)~~ (39) Director of Corrections. The administrative head of the Department of Corrections appointed by the Governor. See Penal Code sections 5050 and 5051.

(40) Dispositional Witness. A dispositional witness is one whose expected testimony provides information regarding the overall adjustment of the prisoner or parolee or other factors to be considered when rendering a disposition in a proceeding.

(41) District Administrator. A parole administrator in the P&CSD with supervisory and managerial responsibilities.

(42) District Hearing Agent (DHA). The P&CSD staff person responsible for application of specific procedures pertaining to the parole revocation hearing process; the primary liaison between the P&CSD and the board in matters and procedures pertaining to the parole revocation hearing process.

(43) Effective Discharge Date. The effective discharge date is the latest date on which the jurisdiction of the board and the department over the individual expires.

(44) Evidentiary Witness. An evidentiary witness is person who perceived, reported on or investigated an event material to the proceeding. An event material to a proceeding is an act or omission allegedly committed by the prisoner or parolee which is a basis for the proceeding. An evidentiary witness is one whose expected testimony either supports or refutes an act or omission allegedly committed by the parolee or prisoner.

~~(44)~~ (45) Federal Concurrent Prisoner. A California prisoner, also under sentence of the United States, who is concurrently serving both sentences in a federal institution.

~~(45)~~ (46) Federal Consecutive Prisoner. A California prisoner, also under sentence of the United States, who is confined in a penal institution of the United States and whose California term shall commence upon completion of the United States' sentence.

~~(46)~~ (47) Federal Contract Prisoner. A California prisoner who is confined in a federal institution pursuant to Penal Code section 2911.

~~(47)~~ (48) Field File. A working file maintained by a parole unit office containing information about a parolee and his current parole.

~~—(48) Friendly Witness. Any witness who is not an adverse witness.~~

(49) Good Cause. A finding by the board based upon a preponderance of the evidence that there is a factual basis and good reason for the decision made.

(50) Good Time Credit. Credit for a DSL prisoner's good behavior and participation in prison program received pursuant to Penal Code section 2930, et seq. Good time credit advances the DSL release date.

(51) Hearing. A proceeding at which evidence is received for use in deciding factual and dispositional questions.

(52) Hearing Panel. One or more persons (commissioners, deputy commissioners or a combination thereof) assigned to consider a case or make a decision.

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(53) Hold. A request by a department employee that a parolee be held in custody until further notice. A person under a parole hold is not eligible for bail.

(54) ICC Prisoner. A California prisoner who is confined in a penal institution of another state pursuant to the Interstate Corrections Compact (See Penal Code section 11189).

(55) Incarcerating Jurisdiction. The jurisdiction where a WICC, ICC, Federal contract, Federal concurrent or concurrent prisoner is incarcerated.

(56) Institution Hearing Coordinator. A department employee assigned to coordinate the rescission process within that institution.

(57) Interstate Unit. The section of the P & CSD which coordinates the supervision of California cooperative parolees and the return of parolees-at-large from asylum states. The Division of the Department of Corrections which has responsibility for federal contract, federal concurrent, WICC, ICC and consecutive prisoners and multijurisdiction parolees incarcerated in the prison of another jurisdiction.

(58) ISL. Indeterminate Sentence Law. This refers to sections of the Penal Code and other Codes as they were operative prior to July 1, 1977.

(59) ISL Release Date. The date on which an ISL prisoner may be released from confinement pursuant to the ISL. The release may be a release to parole or a release to discharge.

(60) Located in California. A multijurisdiction prisoner is located in California if he is a federal contract, federal consecutive or federal concurrent prisoner incarcerated in a federal correctional institution located in California; a California agency prisoner; or an out-to-court prisoner brought before a California court.

(61) Located Outside California. A multijurisdiction prisoner is located outside California if he is a federal compact, federal consecutive or federal concurrent prisoner incarcerated in a federal correctional institution located outside California; a concurrent prisoner; a consecutive prisoner; a WICC prisoner; an ICC prisoner or an out-to-court prisoner brought before a court outside California.

(62) Material Evidence. Evidence which has a substantial bearing on matters in dispute and legitimate and effective influence on the decision of a case.

(63) M.R.D.: Maximum Release Date: the latest date on which a DSL prisoner can be released from confinement. This date is computed by subtracting preprison credit from the period of confinement prescribed by the court and adding this period of time to the reception date. In computing the maximum release date, good time credit is not subtracted. This date shall be recomputed to reflect the addition of any time at large.

(64) Maximum Term. The longest statutory period of time an ISL nonlife 1168 or life prisoner may remain under the jurisdiction of the board.

(65) Minimum DSL Date. The earliest date on which a DSL prisoner may be released from prison. This date is computed by subtracting all preprison credit and all possible good time credit from and adding any at-large-time to the period of confinement under the DSL and adding this period of time to the reception date.

(66) Minimum Eligible Parole Date (MEPD). The earliest date on which an ISL or life prisoner may legally be released on parole. If a prisoner is serving both a life or ISL sentence and a determinate sentence and the determinate sentence release date is later than the statutory MEPD for the life or ISL sentence, the determinate sentence release date is the MEPD.

(67) Minimum Term. The shortest statutory period of time an ISL prisoner must remain under the jurisdiction of the board, including time in prison and on parole.

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(68) Multijurisdiction Parolee. Any concurrent, California concurrent, California agency, or cooperative parolee.

(69) Multijurisdiction Prisoner. Any federal contract, federal concurrent, federal consecutive, concurrent, consecutive, California agency, WICC or ICC prisoner.

(70) NAEA. The Narcotic Addict Evaluation Authority: the releasing authority for persons civilly committed to the custody of the Director of the Department of Corrections for treatment of narcotics addiction. See Welfare and Institutions Code section 3150 et seq.

(71) Out-to-Court Prisoner. A California prisoner who is temporarily removed from a department institution to be brought before a court to be tried for an offense, to be examined by a grand jury or magistrate, or for any other proceedings.

(72) Outpatient Clinic. See POC.

(73) P&CSD. Parole and Community Services Division: department staff who supervise parolees and provide a variety of field services.

(74) PAL. Parolee at large: an absconder from parole supervision, who is officially declared a fugitive by board action suspending parole.

(75) Parole Agent. An employee or any of his supervisors in the Department of Corrections who is assigned to supervise adult felons and civilly committed addicts released to the supervision of the P&CSD.

(76) Parolee. A felon released from confinement in state prison to supervision in the community.

(77) Parole Consideration Hearing. Any hearing at which a prisoner's parole suitability is considered including an initial parole hearing, subsequent hearing, and rehearing.

(78) Parole Hold. See Hold.

(79) Parole Violation. Conduct by a parolee which violates the conditions of parole or otherwise provides good cause for the modification or revocation of parole.

(80) Parole Violation Extension. An extension of return to custody time for a parolee in revoked status.

(81) Parole Violator. A parolee who is found to have violated parole and who may be reconfined pursuant to Penal Code section 3057. A parolee returned to prison with a new court commitment is not a parole violator under these rules even if he has been found in violation of parole.

(82) POC. Parole Outpatient Clinic: a section of the P&CSD which provides psychiatric and psychological treatment and evaluation of parolees.

(83) Preprison Credit. Credit for time in custody as certified by the court and provided for in Penal Code section 2900.5.

(84) Probable Cause. A state of facts as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that the charges are true.

(85) Rap Sheet. The "State Summary Criminal History Information" containing the arrest and dispositional information defined in Penal Code section 11105.

(86) RC. Reception center: an institution designated by the director as a center for the reception of prisoners newly committed to the Department of Corrections.

(87) Receiving State. The state which supervises a cooperative parolee or a concurrent parolee.

(88) Regional Administrator. Administrator of a geographical region in the P&CSD.

(89) Regional Hearing Coordinator. The parole agent assigned to coordinate the revocation process within a P&CSD region.

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- (90) Relevant Evidence. Evidence which tends to prove or disprove an issue or fact in dispute.
- (91) Revocation File. A file containing the documents pertinent to a particular revocation proceeding.
- (92) Screening Offer. An offer of a disposition to a parolee when revocation or revocation extension charges are pending.
- (93) Sending State. The state where a concurrent parolee was imprisoned.
- (94) Slough File. A file supplemental to the central file containing bulky or seldom needed records.
- (95) Staff Representative. A department employee who assists the board during a hearing.
- (96) Subpoena. A means to secure the attendance of a witness at a parole revocation or rescission hearing. It is an order directed to a person requiring that person's attendance at a particular time and place to testify as a witness.
- (97) Subpoena Duces Tecum. A means to secure the delivery of documentary evidence to parole revocation or rescission hearings, ordering ~~It is an order directed to a person requiring~~ that person to deliver documentary evidence at a particular time and place and testify about that evidence.
- (98) Unadjusted Maximum DSL Date. This date is computed by subtracting preprison credit from the period of confinement under the DSL and adding this period of time to reception date. In computing the unadjusted maximum good time credit is not subtracted. This date does not reflect the addition of any time at large (see Adjusted Maximum DSL Date).
- (99) Unit File. See field file.
- (100) Unit Supervisor. A supervisor of case-carrying agents in the P&CSD.
- (101) WICC Prisoner. A California prisoner who is confined in a penal institution of another state pursuant to the Western Interstate Corrections Compact. (See Penal Code Section 11190.)
- (102) Work-Time-Credit: A reduction of the time served for performance in work, training or education programs.

Note: Authority cited: Sections 3041 and 3052, Penal Code. Reference: Sections 187, 189, 205, 209, 217.1, 219, 664, 667.51(c), 667.7, 667.75, 669, 2933, 3046, 3056, 3057, 3060, 4500, 4801, 5075, 5076.1 and 12310, Penal Code; Section 1672(a), Military and Veterans Code; and Initiative, Proposition 7, November 7, 1978, General Election.

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### § 2465. Prisoner Rights.

At the rescission hearing, the prisoner shall have the rights specified in §§ 2245-2255, and the following rights:

(a) Notification of the Charges and the Supporting Evidence. The prisoner shall receive a copy of the charges, and any supporting evidence unless designated confidential ~~under~~ pursuant to § 2235.

(b) Attorney. A life prisoner has the right to be represented by an attorney at the rescission hearing. If the life prisoner is indigent, an attorney shall be appointed at state expense. An ISL or non-life prisoner has the right to request the assistance of an attorney. (See §§ 2690-2701.)

(c) Witnesses. The prisoner shall have the right to request the presence of evidentiary friendly and/or adverse witnesses at a rescission hearing. The witnesses shall be called unless the hearing panel has specific reason to deny the request. Witnesses shall be screened ~~under~~ in accordance with the procedures of § 2668. The prisoner may request subpoenas or subpoenas duces tecum as provided in §§ 2675-2682. If denied, the specific reasons for denial shall be documented and a copy of the document given to the prisoner. During the hearing, the prisoner has the right, under the direction of the hearing panel, to question all witnesses.

(d) Notice of the Hearing. At any hearing where witnesses are approved or an attorney is granted, notice of the hearing shall be given as soon as possible, but no later than four (4) days before the hearing.

(e) Record. The record of the hearing shall be a ~~tape recording~~ stenographic transcript.

Note: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.5, 3041.7 and 5076.3, Penal Code; In re Carroll, (1978) 80 Cal. App. 3d 22 (1978).



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## § 2640. Time Limits.

(a) General. The time limits specified in this section are intended to facilitate the timely completion of various segments of the revocation process in order to hold the revocation hearing within a reasonable time after the placement of the parole hold.

These time limits are directory and do not affect the board's jurisdiction to hold a revocation hearing in the event of delay which does not prejudice the parolee.

In any case in which the chief deputy commissioner determines that the time limits have been exceeded and the delay may prejudice the parolee, the board's Central Office Calendar shall act to complete the revocation hearing process without further delay or to dismiss the parole violation charges and remove the parole hold.

These time limits shall be computed in calendar days. If a date falls on a weekend or holiday, the time limits shall be met on the next working day.

(b) Violation Report. The parole violation report, including the unit supervisor review, shall be completed and signed within 13 days of the placement of the parole hold. ~~The district administrator shall review and sign the report within 17 days of placement of the hold.~~

(c) Advice of Rights to Parolee.

(1) General. Upon notification that a revocation hearing has been ordered, the P&CSD hearing coordinator shall notify the parolee in writing of his rights within 24 days from the placement of the parole hold. In all cases the P&CSD hearing coordinator shall obtain a decision from the parolee regarding witnesses and an attorney within four days of serving the parolee with the notification of rights.

(d) Notification to Board. Within 23 days of the placement of the parole hold, the regional hearing coordinator shall notify the central office hearing coordinator that a revocation hearing should be scheduled, if that is the recommendation (see § 2636). If P&CSD does not recommend a revocation hearing the violation report shall be forwarded to the central office calendar within 23 days of placement of the hold.

(e) Central Office Hearing Coordinator. Upon notification of the decision regarding an attorney or witnesses, the central office hearing coordinator shall appoint an attorney, if necessary, and shall schedule the revocation hearing to be held as provided in subsection (f). The central office hearing coordinator shall notify the P&CSD hearing coordinator of the date and time of the hearing.

(f) Hearing. The revocation hearing shall be held within a reasonable time after the placement of the parole hold, unless the parolee waives the hearing pursuant to Section § 2641. The parole revocation hearing should be held within 45 days of the date the parole hold is placed.

(g) Revocation Hearing: Psychiatric Treatment. If the parole agent determines the parolee cannot be retained locally pending the revocation hearing due to acute psychosis, the parole agent may request authorization from the board at its Central Office Calendar for an emergency return pursuant to Section § 2605(c). Transfer of the parolee in no way eliminates the responsibility of the parole agent or the Parole and Community Services Division to prepare and to insure timely conduct of the hearing.

Note: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3000, 3053, 3056, 3057 and 3060, Penal Code; and *Morrissey v. Brewer*, (1972) 408 U.S. 471 (1972).

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## History

1. Amendment of subsections (a) and (g) filed 10-5-89; operative 11-4-89 (Register 89, No. 41).  
For prior history, see Register 82, No. 52.

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**§ 2643. Parolee Rights.**

(a) General. At the revocation hearing the parolee shall have the rights specified in Sections §§ 2245-2255. The record of the hearing shall be a tape recording.

(b) Notification of the Charges and the Supporting Evidence. The parolee and his attorney, if he has one, shall receive copies of the parole violation report, any supplemental reports, and any evidence supporting the parole violation charges unless designated confidential ~~under~~ pursuant to departmental regulations ~~procedures~~ (see Section § 2235). The parolee and his attorney shall receive copies of any police, arrest, or crime reports relevant to the parole violation charges. Any information which is confidential ~~under~~ pursuant to the department rules shall not be disclosed, but the parolee and his attorney shall be notified that confidential information has been deleted from the report.

(c) Attorney Representation. The parolee is entitled to request the assistance of an attorney at any revocation hearing. If requested, an attorney determination shall be made ~~under~~ pursuant to the procedures of Article 6 of this chapter. If the request for an attorney is granted, the parolee is entitled to retained counsel or appointed counsel if the parolee is indigent.

(d) Witnesses. The parolee is entitled to request the presence of evidentiary ~~friendly~~ and/or dispositional ~~adverse~~ witnesses at any revocation hearing. The witnesses shall be called unless the hearing panel has specific reason to deny the request. Witnesses shall be screened ~~under~~ pursuant to the procedures of Section § 2668. The parolee may request subpoena(s) or subpoena(s) duces tecum as provided in Sections §§ 2675-2682. If denied, the specific reasons for denial shall be documented and a copy of the document given to the parolee. During the hearing the parolee has the right, under the direction of the hearing panel, to question all witnesses.

(e) Notice of the Hearing. At any hearing where witnesses are approved or an attorney is granted, notice of the hearing shall be given as soon as possible but no later than 4 four days before the hearing.

Note: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3041, 3042, 3063.5, 3063.6, 5076.1, and 5076.3, Penal Code; Gagnon v. Scarpelli (1972) 411 U.S. 778.

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## § 2666. Documentary Evidence.

Coordinator staff shall assure that all relevant documentary evidence is available at the hearing and has been made available to the parolee and his attorney prior to the hearing unless designated confidential ~~under~~ pursuant to Section § 2235. This evidence includes the violation report, arrest report, special services reports, psychiatric reports, and statements of witnesses. If relevant documentary evidence is not available, coordinator staff shall specify in writing what the evidence is and why it is unavailable. Any information from the prisoner or parolee supporting his request for an attorney shall not be made available to the hearing panel.

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## § 2668. Witnesses.

### (a) Request.

(1) Prisoner or Parolee Request. The prisoner or parolee may request either evidentiary ~~friendly or adverse~~ dispositional witnesses. ~~Ordinarily persons will not be called as a witness unless the prisoner, parolee, or his attorney submits a specific request that the person appear as a witness. The written request must be timely, i.e., made sufficiently ahead of the hearing to notify the witnesses and to make arrangements to have them present at the hearing. The request shall include the reason for requesting the witness and the expected testimony of the witness.~~

(2) Staff Request. ~~If in reviewing screening the case prior to a hearing, coordinator staff or the board at the central office calendar believes~~ determine that a particular witness is necessary to ~~demonstrate essential facts of the violation, provide testimony regarding an event material to the proceeding,~~ attendance of that evidentiary witness ~~may~~ shall be requested by the staff even though the prisoner or parolee has not requested that witness. ~~If a witness is requested by coordinator staff or the board coordinator~~ In these circumstances, staff shall notify the prisoner, parolee, or his attorney.

(b) Screening. ~~Coordinator sStaff shall screen~~ review the list of requested witnesses prior to the hearing and may refuse to notify or call witnesses. ~~Coordinator sStaff shall document~~ the reason for any refusal to notify or call a witness, and the parolee, prisoner, or attorney shall be told of the refusal prior to the hearing.

(1) Friendly Witnesses. ~~Coordinator staff may refuse to notify any witness whose testimony is clearly irrelevant or cumulative. If there is any question about the expected testimony, the staff may ask the prisoner, parolee, or his attorney to make a written statement which summarizes the expected testimony and states how the testimony would be relevant or non-cumulative. The testimony of character witnesses or other witnesses whose testimony is of a general nature should be presented by means of written statements, letters or affidavits.~~ Evidentiary Witnesses. Staff shall determine that the testimony of an evidentiary witness is clearly irrelevant before refusing to call the witness. (Examples of irrelevant witnesses include a public official having no knowledge of the violation or witness with no knowledge or evidence in mitigation). A requested evidentiary witness should ordinarily be notified to attend even though the testimony may be cumulative, such as where several persons witnessed the incident.

(2) Adverse Witnesses. ~~Great care must be taken in refusing to notify any witness who may be an adverse witness. Staff should be sure that the testimony of the witness is clearly irrelevant before refusing to call the witness. (Examples of irrelevant witnesses include a public official having no knowledge of the violation or witnesses from the trial to relitigate a conviction and the witness has with no evidence in mitigation). A requested adverse witness should ordinarily be notified to attend even though the testimony may be cumulative, such as where several persons witnessed the incident.~~ Dispositional Witnesses. Staff may refuse to notify any dispositional witness whose testimony is clearly irrelevant or cumulative. The testimony of dispositional witnesses whose testimony is of a general nature may be presented by means of written statements, letters, or affidavits.

### (c) Notification.

(1) Evidentiary Adverse Witnesses. ~~Coordinator~~ Sstaff are responsible for making every effort to assure the attendance of any requested adverse evidentiary witness deemed necessary by coordinator staff.

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(2) Dispositional Friendly Witnesses. If he is not represented by an attorney ~~Coordinator staff should~~ shall provide any needed assistance to the prisoner or parolee in notifying friendly dispositional witnesses if he will have any difficulty doing so himself and if he is not represented by an attorney. If assisted by an attorney, the attorney must be advised that he is responsible for notifying friendly dispositional witnesses who are not confined in prison. The attorney shall ~~should~~ notify ~~coordinator staff~~ of witnesses so that arrangements can be made to have them enter custodial facilities.

(3) Documentation. All efforts to locate adverse evidentiary witnesses shall be documented. Any efforts made to locate friendly dispositional witnesses for a prisoner or parolee unassisted by counsel shall also be documented.

If a witness is located, but refuses to attend, the reason for the refusal shall be documented to give the hearing panel sufficient information to determine whether it is reasonable to excuse the witness' attendance.

(d) Transportation. Evidentiary Adverse witnesses who need transportation should be transported to the hearing where feasible. Friendly Dispositional witnesses for a prisoner or parolee without counsel may be given provided transportation.

(e) Fearful Witnesses. Evidentiary Adverse witnesses who refuse to attend the hearing either because they would be subject to risk of harm if their identities were disclosed or who, even if their identity is known, fear for their safety should they attend the hearing, shall be interviewed by ~~coordinator staff~~ prior to the hearing, and their information documented in writing or on tape. The reasons for their fear shall also be documented. The hearing panel shall determine whether there is good cause to excuse a witness' attendance and shall document the decision, including the reasons.

(f) Interviewing Witnesses. A prisoner, parolee, or his attorney has a right to speak to possible witnesses, but it is ~~completely~~ within the discretion of an individual witness whether to speak to or disclose his whereabouts to a prisoner, parolee, or his attorney. No Staff shall not attempt ~~should be made by staff~~ to influence the witness' decision.

Note: Authority cited: Section 5076.2, Penal Code. Reference: Morrissey v. Brewer (1972) 408 U.S. 471.

## DRAFT

### § 2676. Request for Subpoena.

(a) ~~Who May Request.~~ The parolee or prisoner, the parolee's/prisoner's attorney, P&CSD staff, and board staff may request that a subpoena be issued.

(b) ~~To Whom Made.~~ Requests for subpoenas shall be made directly to the District Hearing Agent or to the Classification and Parole Representative or other staff, as appropriate, at least ten working days prior to the scheduled hearing.

(c) When Made. The request shall be made at least ten (10) working days prior to the scheduled hearing.

(d) (c) Subpoena Duces Tecum. A supporting declaration ~~in support of a subpoena duces tecum~~ shall accompany ~~the~~ each request for a subpoena duces tecum. The declaration ~~must~~ shall show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and that the requested witness has possession or control of the documentary evidence.

Note: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.3, Penal Code; In re Carroll, (1978) 80 Cal.App. 3d 22 (1978).

# DRAFT

## § 2677. Criteria for Issuance.

(a) General. ~~The guiding principle in determining whether to issue a~~ A subpoena or subpoena duces tecum is the necessity of ~~shall be issued when it is necessary to secure the presence of a witness or the production of documents for a proceeding. witness testimony or documentary evidence to the proceedings. To be necessary, witness testimony and documentary evidence must be relevant, material and non-cumulative to the parolee's/prisoner's case. This decision can only be made on a case-by-case basis and cannot be stated in any flat policy or rule. Subpoenas shall be issued for evidence that is relevant and material. Each case shall be evaluated individually to make this determination, based upon the following factors:~~

~~Factors to be considered include:~~

- (1) whether the person is an adverse evidentiary or ~~friendly dispositional~~ witness;
- (2) the relevance and materiality of the testimony or documents to the issues to be decided during the fact finding (violation) phase of the hearing;
- (3) the availability of the witness and/or the documents;
- ~~(4) the witness' willingness to appear without a subpoena;~~
- (5) (4) whether the parolee/prisoner or the parolee's/prisoner's attorney has made reasonable efforts to produce an evidentiary material friendly witness;
- (6) (5) whether the witness resides more than 50 miles outside the county where the hearing will be held.

### (b) Witnesses.

(1) General. Requests for subpoenas for witnesses shall be screened ~~under~~ in accordance with the procedures of Section § 2668. A request for a subpoena may be denied for any witness whose testimony is clearly irrelevant or cumulative.

(2) Evidentiary Adverse Witnesses. Requests for subpoenas for evidentiary adverse witnesses shall ordinarily be granted even though the testimony may be cumulative, such as when several persons witnessed the incident. Fearfulness of an evidentiary adverse witness shall be considered and may justify denial of a request for a subpoena. See Section § 2668(e).

(3) Dispositional Friendly Witnesses. Normally only adverse evidentiary witnesses will be subpoenaed. The testimony of dispositional character witnesses ~~and of other witnesses whose~~ testimony is of a general nature should be presented by means of written statements, letters, or affidavits. ~~Subpoenas may be issued for friendly witnesses who can provide relevant and material evidence on behalf of the parolee/prisoner during the fact finding (violation) phase of the hearing but who refuse to appear at the request of the parolee/prisoner or the parolee's/prisoner's attorney.~~ The parolee/prisoner or the parolee's/prisoner's attorney ~~may be asked to~~ shall provide a written statement which summarizes the expected testimony and states how the testimony would be relevant, material, and non-cumulative.

(c) Documentary Evidence. Subpoenas duces tecum may be issued for documentary evidence under the control of someone other than the parolee/prisoner, the parolee's/prisoner's attorney, P&CSD, or the board. A declaration in support of ~~subpoena duces tecum~~ shall accompany the request for a subpoena duces tecum.

(d) At the Time of the Hearing. After the revocation or rescission hearing has commenced, the panel may request such subpoenas or subpoenas duces tecum as they deem necessary. The hearing shall be continued and rescheduled for a date at least ten (10) working days later.



## DRAFT

(e) Denial. The reason for the denial ~~Denial~~ of a request for a subpoena or a subpoena duces tecum shall be documented and a copy of the decision given to the parolee/prisoner or to the parolee's/prisoner's attorney.

Note: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.13, Penal Code; and *In re Carroll*, (1978) 80 Cal.App. 3d 22 ~~(1978)~~.

## DRAFT

### § 2678. Service.

(a) Process. Service may be made by any person 18 years of age or older, in all parts of the state, no later than two days before the hearing, unless good cause for later service is shown. ~~General. Process issued under this article extends to all parts of the state.~~

(b) Subpoena. ~~Except as provided in subdivision (c),~~ Service of a subpoena is made completed by showing the original and delivering a copy to the witness personally.

~~(c) Subpoena Duces Tecum. Service of a subpoena duces tecum is made by showing the original and delivering a copy to the person having possession or control of the documentary evidence. A copy of the declaration in support of subpoena duces tecum shall be delivered with the subpoena duces tecum. Service of a subpoena duces tecum is invalid if the declaration in support of subpoena duces tecum is not served on the person at the same time as the subpoena duces tecum. Subpoena for Peace Officer. When a peace officer designated in Penal Code section 830 is required as a witness in a proceeding relating to an event which he perceived or investigated in the course of his duties, a subpoena may be served by delivering a copy to the officer's supervisor or the person designated by the agency as the agent for service of process. Delivery of the subpoena can be accomplished by sending a copy via mail, electronic facsimile, or electronic mail.~~

~~(d) By Whom Made. Service may be made by any person eighteen years of age or older. Subpoena Duces Tecum. Service of a subpoena duces tecum is completed by showing the original and delivering a copy to the person having possession or control of the documentary evidence. Service is invalid if the declaration in support is not served on the person at the same time as the subpoena duces tecum.~~

~~(e) Timely Made. Service shall be made no later than two (2) days before the hearing, unless good cause for later service is shown.~~

Note: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.3, Penal Code; In re Carroll, (1979) 80 Cal.App. 3d 22 (1979).

## DRAFT

### § 2714. State and National Warrant Systems.

(a) California System. All warrants issued pursuant to ~~Sections §§~~ 2711 and 2712 for parolees whose whereabouts are unknown shall be entered in the California warrant system (Wanted Persons System).

(b) National Warrant System.

(1) Criteria for Entering Warrant in National System. Warrants issued pursuant to ~~Sections §§~~ 2711 and 2712 for parolees whose whereabouts are unknown shall be reviewed by the board at the central office calendar to determine if the warrant should be entered in the national warrant system (National Criminal Information Center--"NCIC"). The factors to consider in determining whether to enter the warrant in NCIC include whether the parolee:

(A) Has a history of prior felony convictions for crimes of violence or for offenses involving weapons, great bodily injury, or sexual assaults;

(B) Is wanted by other state agencies;

(C) Was on parole from a term imposed for a violent crime or for multiple offenses;

(D) May remain on parole at least three months considering the amount of time his parole period can be extended;

(E) Was suspected of having committed other offenses at the time he absconded;

(F) Has family, employment, or residential ties with California; ;

(G) Is likely to have absconded to another state;

(H) Might be accepted for supervision in another state.

The board shall consider any other relevant information, including the expense of returning a parolee to California.

Whenever the board enters a warrant into the NCIC, the board's suspension order shall indicate the specific reasons the warrant has been entered in that system and include an action to return the parolee to California for revocation proceedings.

(2) Execution of Warrant. When the warrant is executed, the parolee shall be returned to California for revocation proceedings (see Chapter 6, Article 7) unless there are specific circumstances and substantial reasons that indicate a return would not be in the interests of justice.

(3) Purging Warrants. If the warrant has not been executed five years ~~eighteen months~~ after entering it in the NCIC, the board shall review the case. If no other jurisdictions have issued warrants since the board issued its warrant, the board shall remove the warrant from NCIC, unless reasons are stated for retaining the warrant.

Note: Authority cited: Section 5076.2, Penal Code. Reference: Section 3060, Penal Code.